

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.556 of 2007

Dashrath Bhanudas Shinde. .. Petitioner
(Detenu)

Versus

1. Shri A.N. Roy,
Commissioner of Police, Greater Bombay.

2. The State of Maharashtra

3. The Superintendent,
Nashik Road Central Prison,
Nashik.

4. The Secretary, Advisory Board. Respondents

Mr.U.N. Tripathi for Petitioner.

Mr.D.S. Mhaispurkar, Additional Public Prosecutor for
Respondent- State.

CORAM : DR.S. RADHAKRISHNAN &

SMT.ROSHAN DALVI, JJ.

Dated : 1st October, 2007

ORAL JUDGMENT : (Smt. Roshan Dalvi, J.)

1. The Petitioner has challenged the detention of his brother
under the detention order No.163/PCB/DP/Zone- XI/2006,

dated 29.9.2006. The order of detention was approved by the State Government on 4.10.2006.

2. The Petitioner has applied for the writ of Habeas Corpus for quashing the order of detention and for release of the detenu.
3. The detention order came to be passed upon two criminal cases filed against the detenu and two in-camera statements were recorded against him.
4. The only ground of challenge with regard to detention is that the cases against the detenu as well as the in-camera statements do not show that the activities of the detenu are prejudicial to the maintenance of public order. Though other grounds have been raised in the Petition, Mr.Tripathi restricted his arguments only with regard to the above ground. It is contended by Mr.Tripathi on behalf of the Petitioner, that the grounds of detention show that whatever be the offence that is alleged to have been committed by the detenu is not in the presence of the public and hence, cannot be a threat to public or cannot be prejudicial to

public order.

5. The first case against the detenu filed under C.R. No.354/2006 for offences under Section 326 read with Section 34 of the Indian Penal Code by the detenu as well as his associates shows the assault by the detenu, inter alia, upon the head of the complainant which resulted in two injuries to the head of the complainant. The detenu is stated to have used a knife in the incident. A complaint came to be recorded by the Goregaon Police Station. The complainant is stated to have been shifted to R.N. Cooper hospital. Despite all this, and though the case is for the offence of grievous hurt against the detenu, the medical report/medical certificate/medical case paper of Cooper hospital is not produced by the prosecution and not put before the Detaining Authority. We consider that as a very severe lapse. The medical certificate is the main document to enable the Detaining Authority to come to a particular subjective satisfaction given about the case against the detenu. It would be thus be the strongest corroborative

evidence of the complainant. Since that was not relied upon by the Sponsoring Authority, we deem it fit not rely upon that case as one of the grounds of detention under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (MPDA Act).

6. We are, therefore, left with one criminal case and two in-camera statements recorded against the detenu. These are under grounds 5(b) and 5(c) of the detention order.
7. Ground 5(b) shows a complaint registered under C.R. No.438 of 2006. It is a complaint made for offences alleged to have been committed by the detenu under Sections 353, 506 (II) read with Section 34 of the Indian Penal Code (IPC), Section 37(1)(a) of the Bombay Police Act and Sections 4 and 25 of the Arms Act.
8. It is the case of the complainant, who is a Police Officer on duty that on 16.8.2006 the complainant was on *bandobast* duty at Aarey Road Petrol Pump, S.V. Road, Goregaon (West) at 21.30 hours. The detenu with his

associates came towards the Policemen on duty shouting loudly. The complainant as well as other Police Constables approached the detenu to pacify him. The detenu took out a chopper hidden in his pant and started threatening the Police Officers. Some pedestrians gathered there. The brother/associate of the detenu took out a knife hidden inside his pant and threatened the people and rushed towards them shouting that he would cut them along with the Police. The people ran away helter-skelter. The shopkeepers shut down their shops. A personal search of the detenu was taken and a chopper was recovered. The complaint was lodged by the Police Officer under the aforesaid provisions. Statements of nine witnesses were recorded. The detenu was arrested. He was produced for remand before the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai on 18.8.2006. He was remanded to Police custody only till 19.8.2006. On 17.8.2006, an application for bail was moved on behalf of the detenu. On 19.8. 2006, he was released on bail of Rs.4,000/-

with surety or cash of Rs.2,000/- . He availed of the bail facility on 19.8.2006.

9. Thereafter certain confidential inquiries were made with regard to the criminal activities of the detenu. It may be mentioned that the Police themselves experienced the detenu's activities. It was revealed that nobody was ready to complain against the detenu. Consequently, two in-camera statements have been recorded.

10. Statement of witness 'A' has been recorded on 24.8.2006.

He has identified the detenu as a local *goonda*, who has created a terror in the locality in Goregaon (West) area. It was stated that he always carried knife and revolver and he was a gangster affiliated to Chota Rajan Gang. It was revealed that the detenu with his associates moved about and carried out criminal activities in the aforesaid area. He extorted monies from the shopkeepers, hawkers and businessmen in that area. He even robbed money and valuables of lone pedestrians. He used to assault whoever opposed him.

11. The statement revealed an incident which took place in June 2006 at about 21.00 hours when the witness was returning home from his work to his residence. When he was near the office of Spectra Motor at Goregaon (West), Mumbai, the detenu and his associates called him near them. The witness went near them. The detenu put his hand on the shoulder of the witness and took him towards a dark place. He threatened the witness. The witness was frightened and begged mercy and requested to be released. The detenu's associates started taking personal search of the witness. The witness had his salary in his pocket. The associate gave blow on his abdomen. The witness shouted loudly out of pain. The detenu took out a knife from his pant pocket and placed it on the neck of the witness and threatened him. Pedestrians and rickshaw drivers gathered. The detenu threatened them also. The people ran away helter-skelter. The rickshaw drivers ran away leaving their auto rickshaws. The associate of the detenu forcibly took out Rs.3,000/- from the inner pant pocket of the witness.

The detenu threatened the witness, if he revealed the incident to any one. Accordingly, he created a terror in the locality.

12. The statement of witness 'B' shows that the witness was a grocer and that the detenu always came to his shop to extort money as he went to the other shopkeepers, hawkers and businessmen. He was affiliated to Chota Rajan Gang. The witness used to give Rs.500/- per month. The detenu and his associates carried knife and revolver. They would rob and extort money in the localities of Goregaon (West).

13. He stated about the incident which took place in May 2006 when at about 15.30 hours the detenu came to his grocery shop. The witness got frightened. The detenu demanded Rs.10,000/- . The witness refused the demanded money. The detenu caught hold of the collar of the witness and threatened the witness. The witness gave Rs.2,000/- from his cash counter due to his terror. The detenu's associate slapped the witness. The detenu took out the revolver from his waist kept inside the pant and pointed it to

the forehead of the witness, demanding him not to shout and to take out the money. The witness was frightened. The witness showed his cash counter and stated that he had only that much amount. 5/6 neighbouring shopkeepers gathered near the shop. The detenu pointed his revolver and threatened them loudly. The people ran away. The shopkeepers shut down their shutters. The detenu snatched Rs.2,000/- from the hand of the witness and his associates took personal search of the witness and forcibly took out Rs.5,000/- from his pant pocket. The detenu threatened them if they informed the Police and went away in the rickshaw.

14. It can be seen that in all these three incidents, the public were involved because the incidents took place on the road side or at the public places such as the shops of the witness. Due to the witness shouting or crying out in pain, the public had gathered. Hence, the contention of Mr.Tripathi that since in one of these incidents, the witness's statement shows that he was taken near the dark area, no public order

could be involved, cannot be accepted. The maintenance of public order is threatened when any serious offence takes place. Even in that incident, rickshaw drivers, who had gathered ran away. Besides, each of these offences are for extortion and criminal intimidation. They are susceptible to be perpetrated on any member of the public who would be deemed gullible by the detenu. Such offences are also susceptible to repetition since the detenu and his associates would be pursuing a career in crime and repeating those offences. Hence, the detenu's activities, as seen from these three incidents, are prejudicial to the maintenance of the public order.

15. We may mention that in the first case under C.R. No.438 of 2006 filed by the Police Officer, the offences alleged against the detenu are of a very grave and serious nature. They include offences of assault or using the criminal force to deter public servant from discharge of his duties (Section 353, IPC, criminal intimidation Section 506 (II), IPC, with common intention and prior concert with his

associates Section 34, IPC). Since the detenu was carrying arms and breaching peace and order of the locality, they also involve Section 37(1)(a) of the Bombay Police Act as well as Sections 4 and 25 of the Arms Act.

16. Nevertheless, immediately after the remand, the detenu made an application for bail. The application for bail along with the reply of the prosecution and the order of the learned Magistrate has been shown to us. The bail application is short and cryptic. It does not mention any particulars relating to the case against the detenu. It only makes a reference to a panchanama showing recovery of the weapon and how the accused has been arrested from his house. It shows that the accused has not assaulted, as alleged.

17. The say of the prosecution shows that the application for bail is opposed because the charges levelled are under the aforesaid sections (which are serious charges). It also shows that no grounds for bail are mentioned in the application. Police investigation is in progress. Accused Nos.1 and 2 are involved in several serious offences and prays that the

application be rejected.

18. It may be mentioned that the case, which came up before the learned Additional Metropolitan Magistrate, was not a case for bail at-least on the date of the application which was on the next date after the incident took place and the accused were produced for their first remand. The application for bail does not show a single ground for releasing the accused/detenu on bail. The say of the prosecution, on the other hand, specifies the offences and the fact that there are several serious offences in which the detenu was involved and the investigation was in progress. Despite that, without allowing the Police Authorities to complete the investigation, on 19.8.2006 itself the detenu who has been released on bail. The detenu has availed of the bail facility on the date of release itself.

19. We may mention that specially the cases involving offences of extortion, criminal force and/or criminal intimation are liable for repetition. They are perpetrated by accused who breach the law and order and the public order

and peace. They are often repeated offences. We may further mention that the learned Magistrate has dealt with the bail application in a most perfunctory, casual and cavalier manner. Despite serious opposition by the prosecution, the detenu was released on bail a mere two days after being remanded to the judicial custody. We may also mention that such orders give out a very wrong signal to offenders such as this detenu. They continue their criminal activities unabated and undeterred. Consequently, there is no respite in the breach of public peace and public order. Their threats cause terror amongst the public and consequently, the public do not come out to lodge criminal complaints to bring such offenders to book. Hence, the need for recording in-camera statement becomes even more profound.

20. We may mention that if the learned Magistrates do consider the applications for bail or remand objectively, seriously and after considering the reply of the prosecution, the need for such detentions would not arise in several cases. It is because of the activities of the detenu coupled

with such bail orders of the Court that the authorities are more required to invoke the provisions of the MPDA Act, which would alone come to the aid or rescue of the public who are terrorized by extortionists and criminal intimidators.

21. We find not only that this is a fit case for detention in which public order was breached and the maintenance of public order came only under the umbrella of the MPDA Act, but that it may not have been necessitated if in the ordinary course of criminal justice system the application for bail was considered with caution and circumspection as is expected of all the Criminal Courts.

22. We may refer to the unreported judgment in the case of **Shri Mitesh Kishore Vithalani vs. The State of Maharashtra & ors.** in Criminal Writ Petition No.1490 of 2006 dated 5th March 2007 wherein the Division Bench of this Court has, relying upon the case of **Sharad Kumar Ivagi vs. State of Uttar Pradesh & ors.** AIR 1989 SC 764, held that being involved in extortion activities brings the

case squarely within the ambit of the term “public order”. We may further mention that not only do the cases of extortion and criminal intimation lend themselves for public disorder but they are always liable to repetition and must be necessarily dealt with initially within criminal justice system itself. That having failed, the order of detention becomes indispensable.

23. In this case, the order of detention is correctly passed. There is no case made out for setting it aside. The Petition is dismissed. Rule stands discharged.

(DR.S. RADHAKRISHNAN, J.)

(SMT.ROSHAN DALVI, J.)